

# SENATE BILL REPORT

## E2SHB 1812

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As Passed Senate - Amended, March 3, 2022

**Title:** An act relating to modernizing the energy facility site evaluation council to meet the state's clean energy goals.

**Brief Description:** Modernizing the energy facility site evaluation council to meet the state's clean energy goals.

**Sponsors:** House Committee on Appropriations (originally sponsored by Representatives Fitzgibbon, Wylie, Berry, Valdez, Pollet and Harris-Talley; by request of Office of the Governor).

**Brief History:** Passed House: 2/13/22, 95-3.

**Committee Activity:** Environment, Energy & Technology: 2/17/22, 2/23/22 [DPA-WM, DNP].

Ways & Means: 2/26/22, 2/28/22 [DPA (ENET), DNP, w/oRec].

**Floor Activity:** Passed Senate - Amended: 3/3/22, 29-20.

### Brief Summary of Bill (As Amended by Senate)

- Establishes the Energy Facility Site Evaluation Council (EFSEC) as an independent agency separate from the Utilities and Transportation Commission.
- Authorizes clean energy product manufacturing facilities, storage facilities, renewable natural gas facilities, and renewable or green electrolytic hydrogen facilities to opt into the EFSEC siting process.
- Adds requirements for notifying and consulting with federally recognized tribes.
- Makes changes to the public comment period and other engagement requirements to EFSEC site application review process.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.*

- Clarifies authorities to EFSEC, including ongoing regulatory oversight.
- Directs the Department of Commerce to conduct rural stakeholder meetings and complete interim and final reports, to include recommendations for how to more equitably distribute costs and benefits of energy projects to rural communities.
- Directs the Joint Committee on Energy Supply and Energy Conservation to review several issues, including inequities where large alternative energy projects have been and are forecast to be sited, and report findings and any recommendations by December 1, 2023.

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## SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass as amended and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Lovelett, Vice Chair; Das, Lias, Lovick, Nguyen, Stanford and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Short, Ranking Member; Brown, Fortunato, Schoesler and Sheldon.

**Staff:** Kimberly Cushing (786-7421)

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## SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass as amended by Committee on Environment, Energy & Technology.

Signed by Senators Frockt, Vice Chair, Capital; Robinson, Vice Chair, Operating & Revenue; Billig, Carlyle, Conway, Dhingra, Hasegawa, Hunt, Keiser, Mullet, Pedersen, Van De Wege and Wellman.

**Minority Report:** Do not pass.

Signed by Senators Wilson, L., Ranking Member; Brown, Assistant Ranking Member, Operating; Schoesler, Assistant Ranking Member, Capital; Honeyford, Ranking Minority Member, Capital; Braun, Muzzall, Rivers, Wagoner and Warnick.

**Minority Report:** That it be referred without recommendation.

Signed by Senators Rolfes, Chair; Gildon.

**Staff:** Jed Herman (786-7346)

**Background:** Energy Facility Site Evaluation Council. Created in 1970, the Energy

Facility Site Evaluation Council (EFSEC) is the permitting and certifying authority for siting major energy facilities in Washington. An EFSEC site certification agreement (SCA) authorizes an applicant to construct and operate an energy facility in lieu of permits or documents required by any other state agency or subdivision. As part of the SCA process, EFSEC issues all state and federal air and water-discharge permits.

EFSEC's siting jurisdiction includes nuclear power plants of any size and thermal electric power plants with a generating capacity of 350 megawatts or greater. Energy facilities of any size that exclusively use alternative energy resources, such as wind power, can also opt into the EFSEC review and certification process.

EFSEC is comprised of a chair appointed by the Governor, and representatives from five state agencies—the departments of Commerce, Ecology, Fish and Wildlife, and Natural Resources, and the Utilities and Transportation Commission. Four other departments—Agriculture, Health, Transportation, and Military— may each choose to participate in EFSEC for a particular project. Local governments must also appoint members to EFSEC to review proposed facilities located in their jurisdictions.

Joint Committee on Energy Supply and Energy Conservation. The Joint Committee on Energy Supply and Energy Conservation (Joint Committee) reviews plans proposed by the Governor for programs, controls, standards, and priorities for the production, allocation, and consumption of energy during any current or anticipated condition of energy supply alert or energy emergency, and makes recommendations back to the Governor for review. The Joint Committee either approves or disapproves any request from the Governor regarding a declaration of a condition of energy emergency. The Joint Committee also receives information related to the state or regional energy supply situation.

The Joint Committee meets at the following times: at least once per year or at anytime upon the call of the Chair to receive information related to the state or regional energy supply situation; during a condition of energy supply alert or emergency; and upon the call of the Chair, in response to gubernatorial action to terminate such a condition.

**Summary of Amended Bill:** The Energy Facility Site Evaluation Council. EFSEC is established as a stand-alone entity of state government, and is no longer housed within the Utilities and Transportation Commission (UTC). The transfer of EFSEC-related authority from UTC to the new EFSEC agency includes all administrative powers, duties, and functions of UTC performed for EFSEC, and employees that carry out these responsibilities, along with all related materials and property. All financial assets held by UTC and appropriations made to UTC for the benefit of EFSEC must be transferred to a new EFSEC account created to carry out the EFSEC siting laws. All pending business and existing contracts and obligations must continue to be performed by EFSEC.

The EFSEC Chair (Chair) must appoint a director to oversee operations and carry out responsibilities for energy facility siting. The director must employ administrative staff.

The director, personal secretary to the director, council chair, and not more than two professional staff are exempt from the Civil Service Law. Permanent membership agency representatives to serve on EFSEC is clarified. A quorum of EFSEC consists of a majority of members appointed for business to be conducted.

The EFSEC's authorities are amended so EFSEC may:

- develop and apply guidelines for ongoing regulatory oversight;
- enter into contracts, not limited to study contracts, to carry out its responsibilities; and
- conduct hearings not only on the proposed location of the energy facilities but also on the operational conditions.

For EFSEC's 12-month reporting requirement to the Governor to apply, an application must be deemed complete by the director. The implementation conditions in a draft certification agreement must include protections for overburdened communities.

Engagement with Local Legislative Authorities and Federally Recognized Tribes. When an application is received, the Chair must notify the city and county legislative authorities where the proposed facility is located; the federally recognized tribal governments affected by the proposed facility; and the Department of Archaeology and Historic Preservation (DAHP). DAHP must coordinate with affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites. EFSEC must work with local governments where a project is proposed to be sited, and with all federally recognized tribes affected by a proposed facility, to provide for participation and input during siting review and compliance monitoring.

The Chair and EFSEC staff must offer to conduct government-to-government consultation to address issues of concern raised by any tribe. The Chair must provide regular updates on the consultation to EFSEC during the application review process. A summary of the government-to-government consultation process, including issues and proposed resolutions, must be included in the EFSEC reports to the Governor that recommend approving or rejecting an application for certification. This summary must comply with the Public Records Act to exempt records, maps, and other information related to archaeological and certain tribal sites from public reporting.

Clean Energy Product Manufacturing Facilities. A person proposing to construct, reconstruct, or enlarge a clean energy product manufacturing facility may choose to receive certification under EFSEC's energy facility siting laws. The authorities that apply to energy facilities apply to clean energy product manufacturing facilities.

Clean energy product manufacturing facilities exclusively or primarily manufacture the following products or components primarily used by such products:

- vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor;
- charging and fueling infrastructure for electric, hydrogen, or other types of vehicles

- that emit no exhaust gas from the onboard source of power, other than water vapor;
- renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock;
- equipment and products used to produce energy from alternative energy resources; and
- equipment and products used at storage facilities.

Other Facilities That May Opt In. In addition to clean energy product manufacturing facilities, storage facilities, all types of renewable natural gas facilities, and renewable and green electrolytic hydrogen energy facilities may also opt into EFSEC's processes:

Electrical Transmission Facilities. For an electrical transmission facility that an applicant is opting to receive certification for, previous requirements are removed so the only requirements are that a facility must be of a nominal voltage or at least 115,000 volts; and located in more than one jurisdiction that has promulgated land use plans or zoning ordinances. The preapplicant fee of \$10,000 now only applies to electrical transmission facilities.

Study of Potential Projects. EFSEC may conduct a preliminary study of a potential project if an applicant and EFSEC agree EFSEC do so, rather than only if the applicant requests the study. EFSEC is no longer required to, but still may, commission an independent consultant to study the potential project. This preliminary study is before any State Environmental Policy Act (SEPA) environmental review process begins, and is not required to include an analysis of environmental impact information. Tribal entities are added to the entities EFSEC may cooperate and work with while conducting the preliminary study. If an applicant submits a formal application for the proposed site that was studied, the applicant's payments for the preliminary study may be considered as payment toward the application fee. The preliminary EFSEC study may no longer be used in place of the Environmental Impact Statement required under SEPA.

Except for the siting of electrical transmission facilities, applicants may request a preapplication review of a proposed project, and council staff must provide comments on any additional studies and stakeholder and tribal input that should be included in the application. After this initial review, the EFSEC staff may conduct or contract a further review and consultation if the applicant pays fees that are agreed upon by the director and the applicant.

Public Hearings and Public Comments. Local jurisdictions are no longer prohibited from changing their plans or ordinances after the land use and zoning ordinance hearing if the proposed site did not conform. Instead, EFSEC must determine whether the proposal is consistent with local land use and zoning ordinances on the date of the application.

Prior to issuing a threshold determination that a facility is likely to cause a significant adverse environmental impact under SEPA, the EFSEC director must notify the project

applicant, explain in writing the basis for its anticipated determination of significance, and provide the applicant the option to withdraw and revise its application and associated environmental checklist. The director must also provide an opportunity for public comment where a project applicant withdraws and revises an application to avoid a determination of significance on the originally submitted application.

There must be a public comment period prior to the start of the final public hearing, conducted as an adjudicative proceeding. During the final public hearing, anyone may raise one or more specific issues but only as long as they raised the issue or issues in writing with specificity during the application review process or during the public comment period prior to the start of this hearing.

If the SEPA review determines the environmental impact of the proposed facility is not significant or will be mitigated to a nonsignificant level, EFSEC may limit the adjudicative proceeding to whether any local land use plans or zoning ordinances that are inconsistent with the proposed site, as determined in the previous hearing, should be preempted.

EFSEC must review and consider comments received during the application process in making its recommendation to the Governor.

Expedited Processing of Applications. An applicant may apply for expedited processing for any facility covered under EFSEC's siting laws, not only energy facilities and alternative energy resource facilities. After expedited processing is granted and before providing a recommendation to the Governor, EFSEC must hold a public meeting to take comments on the proposed application.

Payments to the Energy Facility Site Evaluation Council Account. The EFSEC Account is created in the state treasury, as a non-appropriated account subject to allotment procedures. All payments, including fees, deposits, and reimbursements, received by EFSEC from preapplicants, applicants, and certificate holders, must be deposited into this account, instead of to the State General Fund. Only the Chair or the Chair's designee may authorize expenditures from the EFSEC Account.

Stakeholder Consultation and Report on Rural Clean Energy and Resilience. The Department of Commerce (Commerce) must conduct at least one stakeholder meeting in eastern and one in western Washington with rural, agriculture, natural resource management and conservation, and forestry stakeholders to gain a better understanding of the benefits and impacts of anticipated changes in the state's energy system, including the siting of facilities under the jurisdiction of EFSEC, and to identify risks and opportunities for rural communities.

Commerce must then complete a report on Rural Clean Energy and Resilience, which must consider the stakeholder consultation and must include recommendations for how to more equitably distribute costs and benefits to rural communities. The report must specifically

examine the impacts of energy projects in rural areas to jobs, local tax revenue, agriculture, and tourism, and it must forecast what Washington's clean energy transition will require for energy projects in rural Washington. The report must also include relevant information from the least-conflict priority solar siting pilot project in the Columbia basin. An interim report is due December 1, 2022, and a final report is due December 1, 2023, to EFSEC, the Legislature, and the Joint Select Committee on Alternative Energy Facility Siting.

Joint Committee. The Joint Committee is renamed the Joint Committee on Energy Supply, Energy Conservation, and Energy Resiliency. The Joint Committee must review inequities where large alternative energy projects have been and are forecast to be sited; Commerce's report on Rural Clean Energy and Resilience; and economic development assistance, mitigation payments, and watershed impairment payments that counties not hosting their per capita share of alternative energy resources should provide to counties that host more than their per capita share.

The Committee must hold at least four meetings, with at least two in eastern Washington. The first meeting must occur by September 30, 2022. The Committee must report its findings and any recommendations to EFSEC and the Legislature by December 1, 2023.

Definitions. The following terms are defined: storage facilities, renewable natural gas, renewable hydrogen, green electrolytic hydrogen, and green hydrogen carrier.

**Appropriation:** The bill contains a null and void clause requiring specific funding be provided in an omnibus appropriation act.

**Fiscal Note:** Requested on February 14, 2022.

**Creates Committee/Commission/Task Force that includes Legislative members:** Yes.

**Effective Date:** The bill takes effect on June 30, 2022.

**Staff Summary of Engrossed Second Substitute House Bill (Environment, Energy & Technology):** *The committee recommended a different version of the bill than what was heard.* PRO: The Legislature has enacted robust climate and clean energy laws and now we must produce more clean energy, fuels, and technology while protecting the environment, communities, and tribal rights. We need an efficient, transparent, and effective siting process for clean energy. This bill gives more clean energy access to EFSEC's one-stop permitting process. Washington can be the model for how to build the clean energy future and this is one step in that direction. The bill focuses on establishing on a preapplication process so staff can work with potential applicants, engages DHAP to work with tribes and applicants to develop timely responses to developers, formalizes notification to local government, gives EFSEC tools for issues unresolved to save time in the adjudicative process, and creates an account for expenditures to make them more public. This bill makes Washington more competitive in growing the clean energy sector. Despite

support from a community, when a county passes an ordinance that removes solar and wind from designated agriculture zones the only way a project can move forward is through the EFSEC process. This bill continues policy work from last session. The promise of a clean energy transition has not always lived up to its reality in rural communities. We support a meaningful consultation processes. The ability to successfully site clean energy facilities creates family wage job opportunities. The preapplication process helps weed out bad projects. Additional pathways create additional job opportunities. We appreciate the inclusion of storage facilities. We do not want to rely on imported energy. We need to build facilities to provide carbon free fuels and electricity. The bill promotes procedural certainty. Washington needs to replace fossil fuel infrastructure with clean technology. We like the robust definition of alternative energy resources as well as energy storage.

We support the provisions to ensure better public engagement. We would like to see rural natural resource management and conservation included in the consultation process.

CON: This is a broad expansion of the Governor's authority to override local community decisions for the siting of factories. These are not nuclear power generators, pipelines, or high capacity transmission lines. These factories should be located in industrial zones and local governments can site them. The third hearing reduces and limits the testimony that can be heard.

OTHER: We support clean energy project siting. We need an environmental justice screen for whether a clean energy product manufacturing facility is appropriate for expedited processing. The Commerce report is spot on. Viewshed impacts have very real possibility to impact tourism. We support clean energy to support our growing needs, but are concerned about the expansion to override local planning and zoning decisions.

**Persons Testifying (Environment, Energy & Technology):** PRO: Becky Kelley, Office of Governor Jay Inslee; Kathleen Drew, Energy Facility Site Evaluation Council; Brian Young, WA Department of Commerce; Cassandra Macy, Innergex Renewable Development USA; Isaac Kastama, Clean & Prosperous Washington; Christina Bayaniyan, Sheet Metal Workers Local 66; Mark Riker, Washington State Building & Construction Trades Council; Joe Kendo, Washington State Labor Council; Kelly Hall, Climate Solutions; Matthew Hepner, IBEW/ceww; Justin Allegro, The Nature Conservancy.

CON: Paul Jewell, Washington State Association of Counties.

OTHER: Michael Novakovich, Visit Tri-Cities; Lori Mattson, Tri-City Regional Chamber of Commerce; Darcy Nonemacher, Washington Environmental Council.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** No one.

**Staff Summary of Public Testimony on Bill as Amended by Environment, Energy & Technology (Ways & Means):** PRO: The bill will help streamline the EFSEC permitting

process for renewable energy projects essential to meeting Washington's decarbonization targets. We appreciate the inclusion of the preapplication and consultation processes. We support the efforts to modernized EFSEC to move Washington forward with siting clean energy facilities in our state and to avoid duplication and increase efficiencies. Expanding EFSEC will create jobs, reduce the need to import energy, and increase private business investments in Washington State. It is necessary to provide increased certainty and predictability in permitting processes. We won't make the transition to clean energy unless the facilities necessary to make clean energy are built. The bill strikes the right balance to protect communities and the environment. The costs in the fiscal note drive the capacity of EFSEC to do the work.

**Persons Testifying (Ways & Means):** PRO: Jeff Gombosky, Renewable Northwest; Erin Frasier, Washington State Building & Construction Trades Council; Joe Kendo, Washington State Labor Council, AFL-CIO.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.